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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTO VILLANUEVA,

Defendant and Appellant.

B304523

(Los Angeles County
Super. Ct. No. PA064604)

APPEAL from an order of the Superior Court of Los Angeles County, Michael Terrell, Judge. Affirmed.

Jean Ballantine, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Roberto Villanueva appeals the trial court's order denying his petition for resentencing pursuant to Penal Code section 1170.95.¹ Because Villanueva is ineligible for relief as a matter of law, we affirm the court's order.

PROCEDURAL BACKGROUND²

Villanueva was originally convicted of attempted murder and mayhem. In *People v. Villanueva, supra*, 169 Cal.App.4th 41, this court reversed his convictions due to instructional error. Upon retrial, the jury convicted Villanueva of attempted voluntary manslaughter and mayhem. (*People v. Villanueva, supra*, 196 Cal.App.4th at p. 414.) In 2011, after the second trial, we modified Villanueva's sentence to correct an error, and otherwise affirmed the judgment. (*Ibid.*)

After passage of Senate Bill No. 1437 (2017–2018 Reg. Sess.), Villanueva filed a petition for resentencing pursuant to section 1170.95. He included a preprinted petition form, but did not check any of the boxes therein. He did not request the appointment of counsel. On December 20, 2019, the Los Angeles County District Attorney filed an opposition to the petition, arguing that because Villanueva had not been convicted of murder, and because he personally shot the victim, he was statutorily ineligible for relief.

¹ All further undesignated statutory references are to the Penal Code.

² We derive this background information in part from this court's prior opinions in *People v. Villanueva* (2011) 196 Cal.App.4th 411 and *People v. Villanueva* (2008) 169 Cal.App.4th 41, of which we take judicial notice. (Evid. Code, §§ 452, subd. (d), 459.)

On December 26, 2019, the trial court summarily denied the petition on the ground Villanueva had failed to make a prima facie showing of eligibility for relief. Villanueva did not specify on what basis he was allegedly entitled to relief; he was convicted of attempted voluntary manslaughter, a non-eligible offense; and the jury found he personally used a firearm. Thus, he was statutorily ineligible as a matter of law.

On January 27, 2020, Villanueva filed a timely notice of appeal.

DISCUSSION

After review of the record, Villanueva's court-appointed counsel filed an opening brief that raised no issues, and requested that this court conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Appellant was advised that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. He has filed a supplemental brief.

The trial court properly denied Villanueva's section 1170.95 petition. By its plain terms, section 1170.95 does not encompass crimes other than murder. (*People v. Cervantes* (2020) 44 Cal.App.5th 884, 886–887 [§ 1170.95 unequivocally applies to murder convictions, not voluntary manslaughter convictions]; *People v. Flores* (2020) 44 Cal.App.5th 985, 993 [by its plain terms, § 1170.95 limits relief to persons convicted of murder, not manslaughter]; *People v. Turner* (2020) 45 Cal.App.5th 428, 435–438; *People v. Sanchez* (2020) 48 Cal.App.5th 194, 916; *People v. Paige* (2020) 51 Cal.App.5th 194, 204.) Because Villanueva was convicted of attempted voluntary manslaughter, not murder, he is statutorily ineligible for section 1170.95 relief.

In his supplemental brief, Villanueva complains about a variety of issues related to the preliminary hearing, the evidence presented at his second trial, and the advice given by his appointed trial counsel. These contentions go to the validity of his conviction, and are not cognizable at this juncture. Any such challenges should have been raised in a direct appeal years ago, before the time for such an appeal expired. (See Cal. Rules of Court, rules 8.308, 8.304(b).) Because Villanueva's judgment of conviction is final, these claims are not properly before us.

We have examined the record, and are satisfied no arguable issues exist and Villanueva's attorney has fully complied with the responsibilities of counsel. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende*, *supra*, 25 Cal.3d at pp. 441–442.)

DISPOSITION

The order is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.